

FEDERAL CIRCUIT COURT OF AUSTRALIA

*FIDA-UR-RAHMAN v MINISTER FOR
IMMIGRATION & ANOR*

[2015] FCCA 2582

Catchwords:

MIGRATION – Administrative Appeals Tribunal (Migration and Refugees Division) – Student (Temporary) (Class TU) visa – bogus document – no jurisdictional error – application dismissed.

Legislation:

Migration Act 1958 (Cth), s.476

Migration Regulations 1994, Schedule 2 cl.572.224, Schedule 4, PIC 4020

Applicant:	FIDA-UR-RAHMAN
First Respondent:	MINISTER FOR IMMIGRATION & BORDER PROTECTION
Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File Number:	PEG 43 of 2015
Judgment of:	Judge Street
Hearing date:	17 September 2015
Date of Last Submission:	17 September 2015
Delivered at:	Sydney
Delivered on:	17 September 2015

REPRESENTATION

The Applicant appeared in person

Solicitors for the Respondents: Ms E Tattersall
Sparke Helmore

ORDERS

- (1) The name of the Second Respondent be amended to the Administrative Appeals Tribunal and the filing of any further document in this regard is dispensed with.
- (2) The application be dismissed.
- (3) The applicant pay the first respondent's costs fixed in the amount of \$5800.

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

PEG 43 of 2015

FIDA-UR-RAHMAN

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

1. This is an application within the Court's jurisdiction under s.476 of the *Migration Act 1958* (Cth) in respect of a decision of the Tribunal made on 21 January 2015 affirming a decision of the delegate not to grant the applicant a Student (Temporary) (Class TU) visa. The delegate refused to grant the visa on the basis the applicant did not satisfy the requirements of cl.573.224 of Schedule 2 to the *Migration Act 1958* (Cth), because he was satisfied the applicant had supplied false or misleading information or incorrect documentation to the department.
2. On 29 April 2015 the Registrar made orders providing the applicant with an opportunity to amend the application and to file affidavits and submissions. Whilst the applicant did file affidavits dated 12 May 2015 and two affidavits dated 27 May 2015, which together with an affidavit

filed 9 February were read, no amended application was filed and no submissions were filed by the applicant. The applicant was served with the first respondent's written submissions.

3. The applicant appeared before the Tribunal by video on 20 January 2015 to give evidence and present arguments and was assisted by an interpreter. That attendance was pursuant to an invitation sent on 10 December 2014, consistent with the statutory regime. Relevantly, the Tribunal noted:

11 . On 31 October 20 12 the applicant was requested to provide a range of supporting evidence including evidence of access to funds to satisfy the financial capacity requirements.

12. The applicant provided financial evidence in the form of an undated letter from the National Bank of Pakistan certifying that his father held a long term account with the bank number 033872-1 with a current balance of Rs. 6,180,730. This was accompanied by bank statements and an affidavit from his father.

13. The financial evidence was sent for verification during which a Department officer spoke to the branch manager who advised that the account number did not exist and they had no record of the applicant's father is a client.

14. Invited to comment on the verification findings, a further submission was received which included a statement from his father which stated that the documents issued were "inappropriate because of some personal issues and I had to cancel a nominated financial bank account". A new letter from the National Bank of Pakistan dated January 31, 2013 certifying that his father held an account number 0028733-3 with a balance of Rs.6,138,455.

15. These documents were sent for verification. A Department officer spoke to the branch manager who advised there was no such account number and no record of accounts held in the name of the applicant's father.

...

21. The tribunal discussed the need for an applicant to satisfy public interest criteria 4020 and invited him to comment on the document verification findings.

22. He said with the initially provided documents, his father's business had some problems and needed money so his father had to take money out of that account which he subsequently closed on 16 December 2012 to avoid overdrawing the account which in Pakistan is a criminal offence.

23. The tribunal then asked the applicant to comment on the second set of documents provided which referred to bank account number 0028733-3.

24. The applicant responded that this was a misunderstanding. He said he had applied for a loan and asked the bank to provide loan documents but in error the bank had provided a statement and a letter rather than loan documents.

25. Despite persistent questioning the applicant kept repeating that what he had asked for was a loan document and they had provided him a letter and a bank statement in error.

26. Pursuant to section s.359AA, the tribunal referred to the Department records of the document verification. It explains to the applicant that the information was important because subject to any comments he might make it may lead the tribunal to the view he had provided nongenuine documents and if that was the case it would be a reason or part of the reason for affirming the decision under review.

27. Having read from the verification report's stating that the bank had no record of the applicant's father or of the account numbers provided, the tribunal observed that regardless of whether they had provided loan documents or bank statements, Department enquiries indicated that the documents provided were non-genuine.

28. The applicant said he chose to respond without taking a break to consider his response. He repeated that there had been a misunderstanding and what he had asked for was loan documentation and they had instead provided a bank statement and a letter. He said that at that time there was an army operation going on in his region. The tribunal observed that it had not prevented the bank from responding.

29. He said that by the time he realised the bank had provided him with the wrong documents the decision had been made to refuse his visa and so it was too late.

30. The tribunal referred to the affidavit provided at the commencement of the bearing which the applicant agreed was a

current and recent statement by his father. The tribunal observed that it stated he had applied for a study loan against account 0028733-3. During the verification process, the bank had advised that this account number did not exist.

31. The tribunal told the applicant the evidence presented indicated that he had provided nongenuine documents in breach of PIC 4020.

32. When asked whether there were any compelling or compassionate circumstances he believed should be considered in making a decision he said that the military were trying to abolish education in Pakistan and if he went home there would be nothing for him to study.

33. The applicant said he had nothing further to add.

34. The tribunal finds that in support of his application, the applicant provided bank documents that were bogus. Therefore, the applicant does not meet cl.4020(1).

4. The Tribunal then turned to the issue of whether the requirements of PIC 4020(1) should be waived and found that there were no compelling compassionate circumstances for the requirements to be waived and that there was no evidence before the Tribunal of compelling circumstances that affect the interests of Australia. On that basis, the Tribunal found that the applicant did not satisfy PIC 4020 for the purpose of cl.572.224. It was in those circumstances that the Tribunal found that the applicant did not meet the essential requirement of cl.572.224. The Tribunal found that the applicant does not meet the requirements of the other subclasses and found that the applicant did not meet the criteria for the grant of a student visa and affirmed the decision under review.
5. In the proceedings before this Court, no grounds whatsoever were identified in the application in support of the alleged relief. In the affidavit dated 9 February 2014, the applicant identified and annexed a purported account, which he alleged was his father's bank account and which he said had been closed due to some personal reasons. This was the same document found by the Tribunal to be a bogus document in circumstances where the Tribunal had taken steps to contact the relevant financial institution and had been told that there was no such account number and that the applicant's father was not a client. It is

upon the evidence before the Tribunal or the reasons of the Tribunal that any error as to the finding of a bogus document must be made out. For the reasons summarised by the Tribunal the finding of a bogus document was clearly open on the material before the Tribunal.

6. There is no jurisdictional error in the adverse finding as to the bank account being a bogus document which was provided by the applicant to the department.
7. It is troubling that in those circumstances the applicant would seek to swear an affidavit annexing the bogus document without in any way attempting to explain how it was that the account came into existence, why it was a genuine account, to verify the transactions identified in the account, the source of transactional instruction, how it was an account that belonged to his father, the bank mandate, the authorised signatories, the facts giving rise to its closure, authenticity of the record and addressing if it were a genuine document the circumstances responded to the concerns raised by the Tribunal and the facts that proved it to be a genuine document. For the applicant to annex to an affidavit in this Court and deliberately swear to the truth of the document being genuine is something that could give rise to other steps being taken in relation to the application.
8. It is not, however, necessary to pursue that issue, as the affidavit is not admissible to establish any jurisdictional error in the finding of the bank account being a bogus document. There is no ground of jurisdictional error identified in the application. Nothing was said by the applicant to identify any jurisdictional error. The adverse findings of the Tribunal were clearly open. The application is dismissed.

I certify that the preceding eight (8) paragraphs are a true copy of the reasons for judgment of Judge Street

Associate:

Date: 22 September 2015